

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

REBA GAIL CLELAND, and TERRY W.
CLELAND,

Plaintiffs

v.

DOLGENCORP, LLC, d/b/a, DOLLAR
GENERAL

Defendant.

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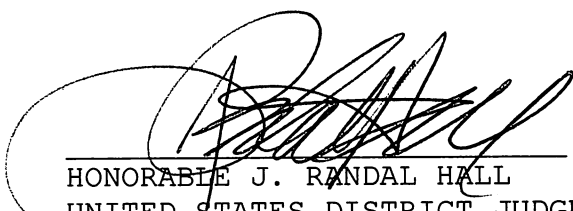
On April 18, 2016, Defendant filed a bill of costs requesting \$2,332.55. (Doc. 60 at 1.) The bill of costs maintains that judgment was entered on March 31, 2016 on four of Plaintiffs' five counts. (Id.) Accordingly, Defendant "calculated only four-fifths of the total costs to reflect the percentage which Defendant prevailed at summary judgment." (Id. at 3.)

Federal Rule of Civil Procedure 54 governs when a party's costs may be taxed to another party. Rule 54(d)(1) provides that "[u]nless a federal statute, these rules, or a court provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." To be a prevailing party, "a party need not prevail on all issues. A party who has obtained some relief usually will be regarded as the prevailing party even though he has not sustained all of his claims." Emery v. Am. Airlines, Inc., No. 15-10100, 2016 WL 1425939, at *4 (11th Cir. Apr. 12, 2016)

(quotations and citations omitted). In Emery, the Eleventh Circuit found that a plaintiff who prevailed on one of her four claims was the prevailing party in the case. Id.

At this time, the Court has not entered final judgment in this case, and the Defendant is not a prevailing party. See Fed. R. Civ. P. 54(b) ("any order or other decision, however designated, that adjudicates fewer than all claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities"). The Court denied Defendant's motion for summary judgment with respect to Plaintiff Gail Cleland's FLSA claim for time worked during her lunch break. (Doc. 58 at 17.) That claim will proceed to trial, and Plaintiff may prove to be the prevailing party. Until final judgment is entered, the Court will not award costs in this case. Defendant's request for costs (Doc. 60) is therefore **DENIED**.

ORDER ENTERED at Augusta, Georgia, this 8th day of June, 2016.



HONORABLE J. RANDAL HALL
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF GEORGIA